

**UNITED STATES DISTRICT COURT
EASTERN DIVISION OF MICHIGAN
SOUTHERN DIVISION**

EVERGREEN NATIONAL INDEMNITY
COMPANY, an Ohio Corporation,

Case No. 2:09-cv-12941
Hon: Sean F. Cox

Plaintiff,

v.

GIBRALTAR LAND COMPANY,
a Michigan Limited Liability Company,
DSC, Ltd., a Michigan Limited Liability
Company, KENT HOLDINGS, L.C., a
Michigan Limited Liability Company,
DUNHAM PARTNERS, LLC, a Michigan
Limited Liability Company, MATTHEW
WILKINSON, individually and severally,
and ROBYN WILKINSON, individually
and severally,

Defendants.

MOTION FOR ENTRY OF DEFAULT JUDGMENT

Plaintiff, EVERGREEN NATIONAL INDEMNITY COMPANY, an Ohio Corporation, (“Evergreen”) requests that entry of judgment by default be entered against Defendant ROBYN WILKINSON, pursuant to the Federal Rule of Civil Procedure 55(b). In support of this request plaintiff relies upon the record in this case and the Affidavit submitted herein along with the applicable court rules, in particular Fed. R. Civ. P. 55(b) which states in pertinent part:

If the plaintiff’s claim is for a sum certain or a sum that can be made certain by computation, the clerk — on the plaintiff’s request, with an affidavit showing the amount due — must enter judgment for that amount and costs against a defendant who has been defaulted for not

appearing and is neither a minor nor an incompetent person.

GARAN LUCOW MILLER, P.C.

s/Timothy J. Jordan

TIMOTHY J. JORDAN (P46098)

1000 Woodbridge Street

Detroit, MI 48207-3192

(313) 446-5531

tjordan@garanlucow.com

P46098

Dated: October 26, 2009

CONNICK & ASSOCIATES, L.P.A.

(Application for Admittance Pending)

MICHAEL J. CONNICK (0046624)

NorthPoint Tower

1001 Lakeside Avenue, Suite 1720

Cleveland, OH 44114

(216) 367-1150

mconnick@sbcglobal.net

Attorneys for Plaintiff,

Evergreen National Indemnity Company

846629.1

**UNITED STATES DISTRICT COURT
EASTERN DIVISION OF MICHIGAN
SOUTHERN DIVISION**

EVERGREEN NATIONAL INDEMNITY
COMPANY, an Ohio Corporation,

Case No. 2:09-cv-12941
Hon: Sean F. Cox

Plaintiff,

v.

GIBRALTAR LAND COMPANY,
a Michigan Limited Liability Company,
DSC, Ltd., a Michigan Limited Liability
Company, KENT HOLDINGS, L.C., a
Michigan Limited Liability Company,
DUNHAM PARTNERS, LLC, a Michigan
Limited Liability Company, MATTHEW
WILKINSON, individually and severally,
and ROBYN WILKINSON, individually
and severally,

Defendants.

**AFFIDAVIT IN SUPPORT OF MOTION FOR ENTRY
OF DEFAULT JUDGMENT**

TIMOTHY J. JORDAN, being sworn, states:

1. I am an attorney for the plaintiff herein, I am not a party in interest, and I make this Affidavit in support of a default to be entered in the above-captioned matter against defendant, ROBYN WILKINSON.

2. That on July 24, 2009, plaintiff filed a Complaint against defendant Robyn Wilkinson.

3. The defendant was served with a copy of the Summons and Complaint via Certified U.S. Mail, Return Receipt, on September 12, 2009. **Exhibit 1**

4. More than twenty (20) days have elapsed since the date on which the defendant was served with a copy of the summons and complaint.

5. That defendant has failed to plead or otherwise defend in accordance with Fed. R. Civ. P. 12.

6. The Clerk's Entry of Default was entered on October 8, 2009 [Docket No. 19].

7. The defendant is not an infant, incompetent person or a member of the military service.

8. On or about October 31, 2000, Evergreen issued Surety Bond for a Solid Waste Disposal Area – Landfill No. 202185 (the "Bond"), in the penal sum of One Million Dollars and Zero Cents (\$1,000,000.00) to the Michigan Department of Environmental Quality ("DEQ") on behalf of the principal Gibraltar. A true and accurate copy of the Bond is attached to the Complaint as Exhibit A [Docket No. 1-3]. Thereafter, on or about March 8, 2006, the DEQ lowered the penal amount on the Bond to Four Hundred Thirty-Five Thousand Nine Hundred Thirty Nine Dollars and Zero Cents (\$435,939.00).

9. The Bond was issued to the DEQ in relation to the Countywide Landfill, located at 15701 Vreeland Rd., Wayne County, Gibraltar, Michigan 48173 (the "Landfill"). Gibraltar runs, maintains, and/or operates the Landfill within the State of Michigan in accordance with the provisions of Section 11523(1), Part 115, Solid Waste Management of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, being Section 324.11523 of the Michigan Compiled Laws Annotated and the administrative rules promulgated thereunder. The Bond was placed to provide assurance for the maintenance of the finished landfill site for a period of thirty (30) years after the landfill or any approved portion is completed.

10. On or about October 8, 2001, the Defendants including Robyn Wilkinson, executed a certain General Indemnity Agreement (the "Agreement") in favor of Evergreen which, among other things, provided for the Defendants to indemnify and hold Evergreen harmless from losses incurred in connection with the Bond issued on behalf of Gibraltar. A true and accurate copy of the Agreement is attached to the Complaint as Exhibit B [Docket No. 1-4].

11. The Defendants executed the Agreement in order to induce, and as consideration for, Evergreen's issuance of the Bond on behalf of the Defendants.

12. On or about June 4, 2009, the DEQ delivered to Evergreen a claim for the full penal amount of the Bond, Four Hundred Thirty-Five Thousand Nine Hundred Thirty Nine Dollars and Zero Cents (\$435,939.00).

13. Thereafter, on or about June 5, 2009, Evergreen issued its Notice of Demand to Gibraltar and all other indemnitor defendants demanding, jointly and severally, that all indemnitors remit payment to Evergreen for the full penal amount under the Bond of Four Hundred Thirty-Five Thousand Nine Hundred Thirty Nine Dollars and Zero Cents (\$435,939.00) no later than the close of business on June 19, 2009.

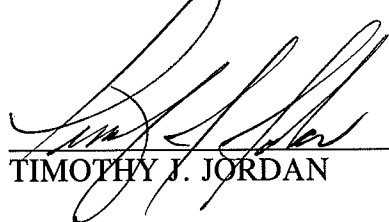
14. On or about June 11, 2009, Gibraltar tendered to Evergreen the proceeds of a certificate of deposit set in place to provide assurance that Evergreen would be protected under the Agreement. Comerica Bank issued check number 343793169 in the amount of Two Hundred Fifty-Five Thousand, Nine Hundred and Two Dollars and Thirty-Six Cents (\$255,902.36) to Evergreen for partial payment pursuant to Evergreen's Notice of Demand.

15. On or about July 15, 2009, Evergreen issued check No. 08019 to the State of Michigan in the amount of Four Hundred Thirty-Five Thousand Nine Hundred Thirty Nine Dollars and Zero Cents (\$435,939.00) in response to the claim made for payment of the full penal amount by the DEQ.

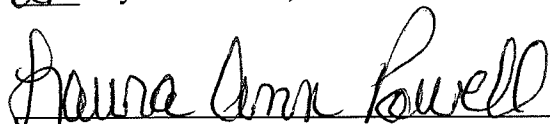
16. As a result of the DEQ's demand for the full penal amount under the Bond, and Evergreen's payment of the full penal amount, Evergreen has incurred and continues to incur losses in excess of One Hundred Eighty Thousand and Thirty-Six Dollars and Sixty-Four Cents (\$180,036.64).

17. Plaintiff seeks entry of a Default Judgment in the amount of One Hundred Eighty Thousand and Thirty-Six Dollars and Sixty four Cents (\$180,036.64). Plaintiff further seeks fees and costs in the amount of \$9,350.37.

18. These statements are true and signed under penalty of perjury.


TIMOTHY J. JORDAN

Acknowledged before me this
21st day of October, 2009.


LAURA ANN POWELL, Notary Public
State of Michigan, County of Wayne
Acting in the County of Wayne
My Commission Expires: 3/28/2015

LAURA ANN POWELL
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Mar 28, 2015
ACTING IN COUNTY OF

**UNITED STATES DISTRICT COURT
EASTERN DIVISION OF MICHIGAN
SOUTHERN DIVISION**

EVERGREEN NATIONAL INDEMNITY
COMPANY, an Ohio Corporation,

Case No. 2:09-cv-12941
Hon: Sean F. Cox

Plaintiff,

v.

GIBRALTAR LAND COMPANY,
a Michigan Limited Liability Company,
DSC, Ltd., a Michigan Limited Liability
Company, KENT HOLDINGS, L.C., a
Michigan Limited Liability Company,
DUNHAM PARTNERS, LLC, a Michigan
Limited Liability Company, MATTHEW
WILKINSON, individually and severally,
and ROBYN WILKINSON, individually
and severally,

Defendants.

DEFAULT JUDGMENT

Defendant ROBYN WILKINSON, having failed to appear, plead or otherwise defend in this action, and default having been entered on October 8, 2009, and counsel for plaintiff having requested judgment against the defaulted defendants and having filed the proper motion and affidavit in accordance with the Federal Rule of Civil Procedure 55(a) and (b);

JUDGMENT IS HEREBY ENTERED in favor of plaintiff EVERGREEN NATIONAL INDEMNITY COMPANY, an Ohio Corporation against Defendant ROBYN WILKINSON, joint and severally with all other named defendants, in the amount of One Hundred Eighty Thousand and Thirty-Six Dollars and Sixty four Cents (\$180,036.64).

IT IS FURTHER ORDERED that Defendant is liable for interest on the judgment at the legal rate until the Judgment is satisfied.

IT IS FURTHER ORDERED that Defendant is liable, joint and severally with all other named defendants, for costs and fees in the amount of \$9,350.37.

CLERK OF COURT
U.S. DISTRICT COURT

CERTIFICATE OF SERVICE

I hereby certify that on **October 26, 2009**, I electronically filed the foregoing document with the Clerk of the Court using the ECF System and mailed a copy of the foregoing via U.S. Mail to Robyn Wilkinson, 20803 W. River Road, Grosse Ile, MI 48138.

GARAN LUCOW MILLER, P.C.

s/Timothy J. Jordan
TIMOTHY J. JORDAN (P46098)
Attorneys for Plaintiff
1000 Woodbridge Street
Detroit, MI 48207
(313) 446-5531
tjordan@garanlucow.com
P46098